LEGISLATION GOVERNING THE INTRODUCTION

OF TECHNOLOGICAL CHANGE

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Legislation Governing the Introduction of Technological Change

The importance of labour code provisions

The role of labour legislation in affecting the limits of collective bargaining is often not appreciated. As the accompanying paper - **"Technological Change Clauses in Practice"** - illustrates, flaws in the design of labour legislation can seriously erode the rights of workers. If collective bargaining is not allowed to operate effectively as an economic stabilizer, problems which might have been resolved at the bargaining table will be thrust back on government. In this sense, all departments concerned with economic matters have an interest in the provisions of the Canada Labour Code and its provincial counterparts. Labour legislation is not simply an arcane matter of interest solely to Labour Canada.

To summarize, it is important to have legislation dealing with technological change because:

1) it is easier to negotiate additional benefits once legislated requirements and minimums have been established;

2) it is easier to police contract provisions if labour's right to negotiate over the terms of technological change is enshrined in legislation;

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3) management often takes the position that important areas, such as retraining arrangements, are non-negotiable. Such positions can only be effectively broken down through legislation; and

4) there are limits to collective bargaining. It cannot protect the unorganized nor those not presently in the workforce. These groups must be protected by redefining management's rights through legislation.

Background

During the 1960's, a number of reports came out recommending a substantial expansion of union rights in the area of technological change.

The first was the Freedman Report, an inquiry set up as a response to changes in operations introduced by the CNR - changes affecting both railway employees and communities. With the conversion to diesels, trains could now "run through" many places where they had formerly stopped for servicing. In his report, Mr. Justice Freedman said:

> **"The institution of run-throughs should be a matter for negotiation. To treat it as an unfettered management prerogative will only promote unrest, undermine morale, and drive the parties farther and farther apart. In that direction lies disorder and danger.**

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> By placing run-throughs, on the other hand, within the realm of negotiation, a long step will be taken towards the goal of industrial peace. More than that. Such a course will help to provide safeguards, against the undue dislocation and hardship, that often result from technological change."

In the late 1960's, the Woods Task Force on Industrial Relations went even further in its recommendations, recognizing that collective bargaining was not capable of answering all the problems arising as a result of technological change. The Woods report stated:

> "The Task Force accepts the following principles. First, management should be protected in its freedom to make changes which in themselves are not in violation of a collective agreement. Second, workers should be protected by an expanded arsenal of public and private programs designed to facilitate their movement among jobs and localities without undue cost to themselves. Third, a union should be free to take action to induce management to negotiate a plan to solve the consequences expected to follow from the proposed changes or to delay the changes themselves, or to negotiate and strike over the right on the issue during the life of an agreement."

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Nothing happening despite these inquiries until the early seventies. Then, technological change provisions were introduced in Manitoba, the federal Canada Labour Code, Saskatchewan and Britisn Columbia.

Provisions

Legislation in the four jurisdictions dealing with technological change is very similar. It basically gives unions - an important point since unorganized workers are given no rights - the right to receive notice of an impending change and establishes the ground rules for determining whether negotiations will or will not take place over the terms of introduction of the change.

There are, however, important differences in the various acts, some of which are outlined below:

1. **definition**
   - The B.C. Labour Code's definition of technological change is much broader than that found in the other acts and could be used to cover such changes in employer operations as contracting out.

   - The Saskatchewan Trade Union Act covers removal of part of an operation within the definition of technological change. Interestingly, it does not cover complete shutdowns which may also result from technological change.

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2. notice

- The B.C. Labour Code does not specify length of notice.

- Saskatchewan defines by regulation the number of employees to be affected in order that a change have "significant" effects. The number is so large that many employers can escape giving notice. The other jurisdictions do not define "significant", leaving room for arbitrary decisions.

3. right to bargain

- The federal code provides that the Canada Labour Relations Board may grant leave to bargain. It does not have to grant leave even if the effects are significant, adverse, and substantial.

- Agreements covered under the B.C. Labour Code are to provide for dispute settlement without a work stoppage. The Minister can impose a procedure for settling disputes if one is missing from a contract.

- Manitoba's act is the only one providing that the existing contract automatically expires 90 days after notice to bargain is served.

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4. **right to strike**

- The B.C. Labour Code prohibits strikes except where an arbitration board has referred the dispute back to the parties.

5. **minimum standards**

- The provisions of the B.C. Labour Code have been interpreted by arbitrators as supplementing contract provisions.

- In other jurisdictions, the protections of the legislation are waived unless it is clear that both legislative and contract provisions are to apply.

Reform of the Canada Labour Code

Ten years of experience with the Canada Labour Code show that its provisions regarding technological change do not work. The Code must be strengthened if it is to function as a part of the federal government's labour adjustment strategy.

The weaknesses of the existing sections 149 to 153 of Part V of the Canada Labour Code may be summarized as follows:

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1. narrow definition of technological change. For example, changes in the "quantity" of equipment are not covered.

2. use of the term "significant numbers" which can be used by management to avoid compliance.

3. inadequate notice; all important decisions on equipment and processes have been made well in advance of the 90 day notice provided for in the Code.

4. no protection for workers when third parties introduce technological change affecting their work.

5. legislation does not provide minimum standards to be supplemented by bargaining.

6. disclosure provisions weak; no requirement for further disclosure as more information becomes available.

7. right to bargain not granted.

8. no penalty to discourage the introduction of technological change until an agreement has been reached.

POOR

QUALITY

ORIGINAL